

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed adoption of)	NOTICE OF PROPOSED
NEW RULE I regarding waiver of in-state)	ADOPTION
office requirement)	
)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Concerned Persons

1. On December 8, 2008, the Division of Banking and Financial Institutions proposes to adopt the above-stated rule.

2. The Department of Administration, Division of Banking and Financial Institutions, will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Division of Banking and Financial Institutions no later than 5:00 p.m. on December 1, 2008, to advise us of the nature of the accommodation that you need. Please contact Christopher Romano, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, MT 59620-0546; telephone (406) 841-2928; TDD (406) 444-1421; facsimile (406) 841-2930; e-mail to cromano@mt.gov.

3. The proposed new rule provides as follows:

NEW RULE I WAIVER OF IN-STATE OFFICE REQUIREMENT (1) The requirement of keeping escrow funds, trust funds, or reserves in accounts in a financial institution having an office in this state is waived.

AUTH: 32-10-309, 32-10-502, MCA
IMP: 32-10-309, MCA

STATEMENT OF REASONABLE NECESSITY: Several applicants for a mortgage lender license have contacted the department requesting a waiver of the requirement of keeping escrow funds, trust funds, or reserves in accounts in a financial institution having an office in this state. For the most part, these applicants are large nationwide lenders that already have escrow funds, trust funds, or reserves in one or more accounts held at a federally insured financial institution. However, the federally insured financial institution does not have an office in this state. Since 32-10-310, MCA, requires each licensee to maintain at its principal place of business all books, accounts, records, and documents necessary to determine the licensee's compliance with the Montana Residential Mortgage Lender Licensing Act, there is no reason to require that the accounts be held at a bank with an office in this state. Therefore, the department has decided to exercise its option under 32-10-309(5), MCA, to waive the in-state office requirement.

4. Concerned persons may present their data, views, or arguments concerning the proposed adoption in writing to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, MT 59620-0546; faxed to the office at (406) 841-2930; e-mailed to kosullivan@mt.gov, and must be received no later than 5:00 p.m., December 5, 2008.

5. If persons who are directly affected by the proposed adoption wish to present their data, views, or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit the request along with any comments they have to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, MT 59620-0546; faxed to the office at (406) 841-2930; e-mailed to kosullivan@mt.gov, and must be received no later than 5:00 p.m., December 5, 2008.

6. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of those who are directly affected by the proposed adoption, from the appropriate administrative rule review committee of the Legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be five based on the number of residential mortgage lender licensees as of publication of this notice.

7. An electronic copy of this proposal notice is available through the department's web site at <http://doa.mt.gov/administrativerules.asp>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Christopher Romano, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, MT 59620-0546; faxed to the office at (406) 841-2930; e-mailed to cromano@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. Representative Walter McNutt, the primary bill sponsor of HB 69

(2007), which became the Montana Residential Mortgage Lender Licensing Act, was notified on July 27, 2007, by U.S. mail.

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State October 27, 2008.